

Commercial Law Alert

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High time to check and adapt the contractual terms:
stricter payment terms in B2B relations as of 1 February 2022

As of 1 February 2022, new rules on payment terms will mandatorily apply to all B2B contracts in Belgium. These rules are included in the Act of 2 August 2002 on combating late payment in commercial transactions (**2002 Act**), as modified in August 2021.

Current status

Under the initial version of the 2002 Act, a payment term of 30 days applies by default if no other payment term is included in the contract. Companies can agree on another term, even longer than 60 days, as long as the agreed terms are not manifestly unfair. Moreover, companies may postpone the starting point of the payment term until after the period for the verification of the goods or services has elapsed. Certain companies have, however, been found to have misused these rules to impose disadvantageous payment terms on their contractual parties.

Such potential misuse, but only in transactions with Small and Medium Enterprises (**SMEs**), has been tackled by the 2019 amendment to the 2002 Act. In commercial relations between an SME creditor and a non-SME debtor, payment terms have since been limited to a maximum of 60 days and verification periods shortened to a maximum of 30 days. The payment term starting date could still commence after the end of the period to verify the quality of the goods or services. Accordingly, the maximum payment terms could be even longer than the theoretical maximum of 90 days.

Status as of 1 February 2022

As from 1 February 2022, however, new mandatory provisions will apply with regards to payment terms in all commercial transactions. The goal of the statutory modifications will be to further eliminate abusive payment terms imposed by “stronger” contractual parties in all B2B commercial transactions. The main changes are the following:

- **The maximum allowed payment term will be 60 days.** All contractual terms that exceed 60 days will be considered null and void and the statutory default term of 30 days will apply instead.
- The **verification period** regarding the quality of the goods or services **will be mandatorily included in the payment term.** Accordingly, it will not be possible to provide that a party will first have a certain time to verify the quality of the deliverables and that the payment term will only start to run after that period has elapsed.
- The date of receipt of the invoice may no longer be contractually determined by the parties; the **invoice payment term mandatorily starts to run after the invoice receipt date.**
- The **receiver of the goods or services must provide** to the supplier **all details necessary to issue an invoice at the latest on the day of the receipt of the goods or services.** Failure to do so will likely result in the courts considering that the invoice could have been issued on the date of the goods delivery or of the services supply and, accordingly, that the invoice payment term started to run on that date.
- New payment terms will apply to all commercial transactions as well as to transactions with public authorities. Consequently, all entities and not only SME's will be protected against potential misuse.
- The right to interest will no longer be optional; **interest and a lump sum compensation for recovery costs will automatically be due** in all commercial transactions.

The new law enters into force on 1 February 2022. The law does not include a specific transitory rule, which creates uncertainty about whether the law applies to all agreements, including the existing ones, or only to new agreements concluded after 1 February 2022. As per general principles, the law, since it includes overriding mandatory provisions, would be applicable also to existing contracts. However, the government's position is that the law should apply only to new contracts. Without further official clarifications, contractual parties face legal uncertainty. If the payment terms in the ongoing agreements are not modified after 1 February 2022, they may risk becoming annulled in courts and replaced by the statutory default term of 30 days. This, in turn, will lead to the interest being automatically payable for the period exceeding 30 days.



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